

1 THE HONORABLE BARBARA J. ROTHSTEIN

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7 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

8 METROPOLITAN PROPERTY AND  
9 CASUALTY INSURANCE COMPANY,  
a Rhode Island corporation,

10 Plaintiff,

11 vs.

12 DAVID H. HERRERA and BECKY L.  
13 HERRERA, husband and wife, and the  
14 marital community comprised thereof,

15 Defendants,

16 and

17 BRIAN ONUTZ and AMY ONUTZ, a  
18 married couple,

19 Intervenors.

Case No.: 2:19-cv-00250-BJR

**MOTION FOR VOLUNTARY  
DISMISSAL OF HERRERAS'  
COUNTERCLAIMS PURSUANT TO  
RULE 41 AND ORDER DISMISSING  
COUNTERCLAIMS**

20 COME NOW, the Defendants David H. Herrera and Becky L. Herrera, by and  
21 through below signed counsel, and pursuant to Rule 41 move the Court for an order  
22 dismissing the Herreras' counterclaims for bad faith, breach of the Consumer Protection  
23 Act, and coverage by estoppel. The Herreras intend to pursue their claim for attorney fees  
24 and costs pursuant to *Olympic Steamship Co. v. Centennial Insurance Co.*, 117 Wash. 2d 37,  
25 811 P.2d 673 (Wash. 1991), and other applicable law regarding attorney fees available to

MOTION FOR VOLUNTARY DISMISSAL OF HERRERAS'  
COUNTERCLAIMS PURSUANT TO RULE 41 AND ORDER  
DISMISSING COUNTERCLAIMS- 1.

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1 insureds when they prevail against their insurer in a coverage action.

2  
3 DATED this 20<sup>th</sup> day of December, 2019.

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5 **KROONTJE LAW OFFICE, PLLC**

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13 **FOSTER GARVEY PC**

14 /s Jack Zahner

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16 /s Devra Cohen

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MOTION FOR VOLUNTARY DISMISSAL OF HERRERAS'  
COUNTERCLAIMS PURSUANT TO RULE 41 AND ORDER  
DISMISSING COUNTERCLAIMS- 2.

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**ORDER**

THIS MATTER having come on the before the Court on Defendant Herreras' *Motion for Voluntary Dismissal of Herreras' Counterclaims Pursuant to Rule 41*, the Court having reviewed the motion, there being no objections, and otherwise being fully advised, now therefore,

**IT IS THEREFORE ORDERED** that Defendant Herreras' Motion for Voluntary Dismissal of Counterclaims Pursuant to Rule 41 is hereby **GRANTED**. Defendant Herreras' counterclaims for bad faith, breach of the Consumer Protection Act, and coverage by estoppel are **DISMISSED WITHOUT PREJUDICE**. This order does not impact the Herreras' rights and claims with respect to attorney fees and costs in relation to the Court ruling on the motion and cross motions for summary judgment.

DATED: This 23<sup>rd</sup> day of December, 2019.

  
THE HONORABLE BARBARA J. ROTHSTEIN  
United States District Judge

PRESENTED BY:

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MOTION FOR VOLUNTARY DISMISSAL OF HERRERAS'  
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DISMISSING COUNTERCLAIMS- 3.

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MOTION FOR VOLUNTARY DISMISSAL OF HERRERAS'  
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DISMISSING COUNTERCLAIMS- 4.

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